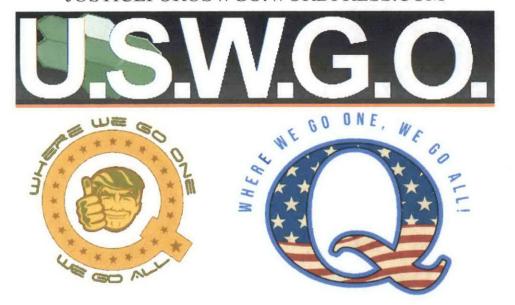
# EXHIBIT 5: USA v. Brian David Hill - 7:18-MJ-00149, December 26, 2018, Supervised Release Revocation Hearing. Transcript completed on May 2, 2022 for

attached to: "EXHIBIT LIST IN SUPPORT OF
PETITIONER'S REPLY TO GOVERNMENT'S RESPONSE
(DKT. #319) TO MOTION UNDER 28 U.S.C. § 2255 TO
VACATE, SET ASIDE, OR CORRECT SENTENCE (DKT.
#291)"; and in support of "PETITIONER'S REPLY TO
GOVERNMENT'S RESPONSE (DKT. #319) TO MOTION
UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR
CORRECT SENTENCE (DKT. #291)"
by Brian David Hill

Case no. 1:13-cr-435-1; civil no. 1:22-CV-00074

Ally of Q, Former news reporter of USWGO Alternative News JUSTICEFORUSWGO.WORDPRESS.COM



### USA v. Brian David Hill - 7:18-MJ-00149

- 1	
1	IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF VIRGINIA
2	ROANOKE DIVISION
3	UNITED STATES OF AMERICA,
4	Plaintiff, CASE NO.: 7:18-MJ-00149 December 26, 2018
5	Roanoke, Virginia Supervised Release Revocation
6	-v- Hearing
7	BRIAN DAVID HILL, Before: HONORABLE ROBERT S. BALLOU
8	UNITED STATES MAGISTRATE JUDGE Defendant. WESTERN DISTRICT OF VIRGINIA
9	************
10	APPEARANCES:
11	For the Plaintiff:
12	KARI KRISTINA MUNRO United States Attorneys Office
13	310 First Street, S.W. Room 906
14	Roanoke, VA 24008 540-857-2907
1.	kari.munro@usdoj.gov
15	For the Defendant:
16	RANDY VIRLIN CARGILL
17	Federal Public Defenders Office Suite 420
18	210 First Street, SW Roanoke, VA 24011
19	540-777-0880 randy cargill@fd.org
20	
21	
22	Kelly Brown - FTR Recorder Mary J. Butenschoen - Transcriber
23	raly 0. bucensencen - Itanscriber
24	PROCEEDINGS TAKEN BY FTR; TRANSCRIBED USING COMPUTER-AIDED TRANSCRIPTION
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## USA v. Brian David Hill - 7:18-MJ-00149

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(Proceedings commenced 2:45 p.m.)
1
               THE CLERK: United States of America v. Brian David
2
     Hill, Case Number 7:18-MJ-149.
3
               THE COURT: All right. Let the record reflect the
4
     government is present by its counsel. The defendant likewise
5
     is present along with counsel.
6
               Mr. Hill, good afternoon. My name is Robert Ballou.
7
     I'm a magistrate judge here in the Western District of
8
     Virginia. We are here today in connection with a petition that
9
     has been filed in the Middle District of North Carolina to
10
     revoke the terms of your supervised release. You will recall
11
     that you were sentenced down in the Middle District of North
12
     Carolina on a -- on a charge -- I can't tell the date of the
13
     original -- in November of 2014 on a charge of possession of
14
     child pornography. Following a term of imprisonment you had
15
     some supervised release to address, and the petition alleges
16
     that you violated the terms of your supervised release.
17
               Do you understand these things?
18
               THE DEFENDANT: Yes.
19
               THE COURT: All right. Let me begin, first of all,
20
     by asking you to state your full name for me, please.
21
               THE DEFENDANT: B-R-I-A-N.
22
               THE COURT: Just tell me your name.
23
               THE DEFENDANT: Brian David Hill.
24
                THE COURT: All right. How old are you, Mr. Hill?
25
```

```
THE DEFENDANT: What was your question?
1
               THE COURT: How old are you?
2
               THE DEFENDANT: I'm 28 years old.
3
               THE COURT: Okay. Do you take any medication?
4
               THE DEFENDANT: Insulin, and I think it's Novolog and
5
6
     Lantus.
               THE COURT: All right. What do you take those last
7
     two for?
8
               THE DEFENDANT: Managing my type 1 brittle
9
     diabetes.
10
               THE COURT: All right. So all the medication you
11
     take is for your diabetes; is that correct?
12
               THE DEFENDANT: I also take medication for my carpal
13
     tunnel.
14
               THE COURT: Okay. All right. Is that all you take
15
     medication for?
16
               THE DEFENDANT: Piedmont Community Services did
17
     prescribe me medication for anxiety.
18
               THE COURT: Okay, for anxiety? Okay. What
19
     medication is that?
20
               THE DEFENDANT: I don't know the name.
21
               THE COURT: Okay.
22
               THE DEFENDANT: But it's -- I don't know.
23
               THE COURT: Okay.
24
               All right. Counsel, before we get too far into this
25
```

```
hearing, certainly no issue as it relates to identity; is that
 1
     right, Mr. Cargill?
 2
               MR. CARGILL: Correct, Your Honor.
 3
                THE COURT: All right. Before we get too far into
 4
     this hearing, I did meet with Mr. McMurray, who I think had
 5
 6
     been supervising Mr. Hill in advance. I've got concerns about
     Mr. Hill's ability to be able to participate in his defense, at
7
     least at this state, so I'm going to call Mr. McMurray first
8
     and address where we are in that regard.
 9
               Mr. McMurray, if you can come on up and be sworn.
10
     You-all please have a seat, Mr. Hill.
11
                JASON McMURRAY, CALLED BY THE COURT, SWORN
12
                                EXAMINATION
13
                THE COURT: Mr. McMurray, if you could state your
14
     full name for me and tell me who you're employed by.
15
          Jason McMurray. I am a United States Probation Officer
16
     for the Western District of Virginia.
17
                THE COURT: Are your caseload dealing with
18
     supervising Brian David Hill?
19
          I have supervised, that's correct, Mr. Hill since
20
     approximately July 9 of 2015.
21
                THE COURT: All right. And Mr. Hill is sitting here
22
     in the courtroom with his counsel?
23
          He is seated to Mr. Cargill's left, that's correct.
     Α
24
                THE COURT: All right, very well. Tell me how you
25
```

came to be Mr. Hill's supervisor.

A Mr. Hill -- there was a petition for revocation of supervised release filed prior to myself assuming supervision in the Middle District of North Carolina. His previous probation officer had filed that.

The Court in Middle District of North Carolina chose not to revoke Mr. Hill's supervision; chose to continue him on supervision, modifying his conditions so that he would have to serve six months of home detention. And when he was released, that's when I took over his case for supervision.

THE COURT: All right. And, of course, there's a petition that's been filed in connection with some charges down in the City of Martinsville, I believe?

A That's correct. He was arrested September the 21st, 2018, in the City of Martinsville for indecent exposure.

THE COURT: All right. And have you expressed to me some concerns about Mr. Hill's present mental capacity?

A Based on some letters I have received from Mr. Hill since he was incarcerated, that is correct. I do have some concerns for his mental capacity.

THE COURT: Tell me a little bit about those.

A Well, I'm in possession of four letters that were written by Mr. Hill, or at least represented to be written by Mr. Hill. And in the letters there's a recurring theme of a man in a hoodie forcing Mr. Hill -- breaking into his house forcing

Mr. Hill to leave his home, strip nude, and walk.

He was -- if I may, he was found walking nude on a walking trail in Martinsville on September the 21st, and these letters state that an individual in a hoodie came after him, made him strip down naked or they would go after his mother.

THE COURT: All right. And these are all written to you after -- within the last three or four months?

A These were all addressed to me after he was arrested and incarcerated in Martinsville. They all came from the Martinsville City Jail.

THE court: All right. Has he expressed to you any perception about his grasp of the -- kind of the overall world around him and -- I'll state it another way.

The standard I need to deal with is whether he may be suffering -- whether there's reason to believe that he's suffering from a mental disease or defect that will affect his ability to defend himself in connection with this particular petition.

A Would it help if I read excerpts from the letters?

THE COURT: If you could just do that just so we can

A A letter I have here dated December 13, 2018, would you

like me to read the whole thing, Your Honor, or --

know what the record will have.

THE COURT: Not the whole thing. Just explain what's in the letter and --

```
In the letter, as I stated before, he -- he states that he
1
     has done good under me as a probation officer "until the guy in
2
     the hoodie came after me by going after my mom. I knew the
3
     risks, and when I filed my 2255 motion and brief proving fraud
4
     upon the court in proving their crimes puts a big target on my
5
     back."
6
          Another excerpt states, "They will probably kill Donald
7
     Trump and his whole family or imprison them, all then do the
8
     same thing to me and my whole family like the Nazis did in
9
     Germany. The U.S. Attorney won't stop coming after me until I
10
     die or rot in prison forever. They do not want my friends and
11
     family to tell the truth, especially online."
12
               THE COURT: All right. Okay, I think I understand
13
     where things are.
14
               Ms. Munro, any questions for Mr. McMurray?
15
               MS. MUNRO: A couple, I think --
16
               THE COURT: Sure.
17
               MS. MUNRO: -- for the record as it relates to that
18
     issue.
19
                                EXAMINATION
20
     BY MS. MUNRO:
21
          So I think you indicated you'd been supervising him since
22
     2015?
23
          Yes, ma'am, that's correct.
     Α
24
     Q
          Is that when he came to Martinsville?
25
```

```
He was living in Martinsville prior to that when Officer
1
     Burton was supervising him.
2
          Okay. And why did he come to Martinsville, do you know,
3
     from North Carolina?
4
          That's where his family was residing. His grandparents --
     Α
5
     grandmother, grandfather -- and his mother all reside in
6
     Martinsville.
7
          And they still currently reside there?
     Q
8
          Yes, ma'am, that's correct.
9
     Α
          And is that the family members with whom he's been
     Q
10
     residing between 2015 and the present?
11
          That's correct. He was residing in a home with both
12
     grandparents and a mother. And within the last year, year and
13
     a half, the mother and Mr. Hill obtained their own housing, one
14
     of -- it's a home, a duplex, that has a first floor and a
15
     second floor. Mr. Hill resides on the bottom floor with his
16
     own private entrance.
17
          Okay. And then the family members who are upstairs are
18
     who?
19
          It's just his mother.
     Α
20
          Just his mother.
     Q
21
     Α
          Yes.
22
          But as of a month or so ago, it was -- it also included
23
     his grandparents?
24
          No, ma'am.
                       That's -- that's not correct.
     Α
25
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5

6

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24

About a year, year and a half ago, give or take, Mr. Hill 1 and his mother moved out of the grandparents' home. 2 Okay. Now, you indicated that you had taken part in the 3 filing of a petition back in September of 2015 relating to some

violations down in North Carolina; is that correct?

It was more of a notice of noncompliance than it was a petition. Mr. Hill, part of his supervised release was that he complete or participate in certified sex offender treatment, which we referred him to treatment. And the treatment provider found that he was not amenable to treatment. Mr. Hill does not

accept responsibility for the conviction, and that in a sex

offender treatment setting, that hinders the group.

So since he did not successfully complete the treatment, I had to notify Middle District of North Carolina. The court down there stated that if Mr. Hill was otherwise compliant that we could allow him to remain on supervision, and he was. So he continued his supervision.

- But when you say he wasn't taking responsibility for the underlying conviction, do you mean that child pornography conviction in 2014?
- That's correct. That's correct.
- I see. And around that period of time when you first met and started supervising Mr. Hill, were you aware then whether there were other instances in which he was doing a lot of letter writing or posting on the internet in relation to his

24

25

criminal cases? 1 He has engaged in that behavior for quite a while. Prior 2 to my taking over supervision of the case, he was filing 3 numerous motions in Middle District of North Carolina. That's 4 something he did quite often. I can't give you numbers or 5 exactly what it was, but that is something that he has done in 6 the past, is file motion after motion with the court. 7 I think one of the excerpts that you read indicated that 8 he believed that the U.S. Attorney, is what he described it as, 9 would keep coming after him until he was dead. 10 Has he made similar kinds of allegations against other 11 people involved in his prosecutions in the past? 12 He has. Mr. Hill has spent a majority of his time Α 13 focusing on trying to get his underlying charge of having an 14 appeal, having it overturned. That is what he is focused on. 15 Okay. Has he focused on any particular individuals in 16 connection with that prosecution? 17 Various individuals in the past. I cannot pronounce this Α 18 Assistant U.S. Attorney's name, but it's a recurring last name. 19 I could spell it, but I can't pronounce it, unfortunately. But 20 I would spell it if you'd like me to. 21 Sure, that would be fine. Q 22

A Assistant U.S. Attorney P-R-A-K-A-S-H, first name. Last name R-A-M-A-S-W-A-M-Y. His spelling, of course.

Q Is it your interpretation that that's the same AUSA that's

listed in this petition that is currently before the Court as 1 the original prosecuting AUSA? 2 I'll have to view the petition to double check. Α 3 Okay. It's possible, though; is that correct? 4 It is possible, but I'll have to review the petition. Α 5 And you indicated that he was charged in Martinsville with 6 indecent exposure. Was he tried? 7 This just occurred last Friday. I'm not privy to the Α 8 court documents, as I don't think they have been filed. I know 9 that he had planned to plead not guilty. In my view of the 10 online Virginia court website, it appears that he pled not 11 quilty but was found guilty, sentenced to 30 days in custody, 12 which was tantamount to time served, and he's now in our 13 custody. 14 Okay. And do you know whether or not he made any 15 statements at the time of his arrest in Martinsville about this 16 man with the hoodie? 17 I can speak to the arresting officer's report in which he 18 stated that a man in a hoodie forced him to leave his home and 19 undress. 20 Okay. And then finally, have you spoken with his family 21 members in connection with the instant petition in preparation 22 for the hearing today? 23 I spoke with his grandfather a week ago Tuesday. Α 24 Okay. And so the Court understands, what have his family Q 25

```
members indicated, first of all, about his living arrangement
1
     here in the Western District?
2
          They indicated to me last Tuesday -- well, "they" I mean
3
     the grandfather -- indicated to me that they can't house
4
     Mr. Hill due to his medical issues. He suffers from diabetes,
5
     amongst other ailments, and they have been seeking an assisted
6
     living environment if he were to qualify for one, but they
7
     stated that they can't house him any longer.
8
          I see. And when you say they, does that include his
9
     mother, or did you not speak with his mother?
10
          I have not spoken with his mother in quite some time, but
11
     his grandfather indicated that he would not have a place to
12
     live. That's how I took it. Because when he called last
13
     Tuesday, Mr. Hill was due in Martinsville City court on Friday,
14
     his grandfather was concerned if he were to get out that Friday
15
     where would he go, because he doesn't have a home.
16
          Okay. And then finally, what do you understand about the
17
     nature of his diabetes?
18
          Obviously, not a medical professional, but I have spoken
19
     with his family numerous times about his diabetes.
20
     diabetes is very severe.
21
          Okay.
22
          I'm -- I can't get into the scientific nature, but he does
23
     suffer greatly from great spikes in blood glucose, I think, and
24
     then it bottoms out. He does have a lot of issues with
25
```

diabetes. 1 Did his family members talk to you about whether they have 2 had, specifically, difficulty with those spikes and drops in 3 his diabetic condition? 4 His mother told me on one occasion that she was going Α 5 downstairs to his portion of the domicile every morning very, 6 very early to check his blood sugar because there have been a 7 couple mornings that he -- he was having a hard time waking up. 8 So she would go down early to check his blood sugar to see if 9 he needed insulin or -- not insulin, but if he would need to 10 take some form of sugar supplement to get his blood sugar up. 11 Okay. 12 Or opposite. 13 Α MS. MUNRO: Okay. All right. Nothing further. 14 Thanks. 15 THE COURT: Before you ask any questions, 16 Mr. Cargill, tell me about anything that you've seen with 17 respect to Mr. Hill in connection with his -- when you've 18 visited him in his home and his perspective on where he is in 19 life. 20 THE WITNESS: Well, I have been to Mr. Hill's home 21 numerous times, and, as I've stated previously, whenever I'd 22 ask him how he was doing, he was very polite and was always 23 welcoming. He could be sometimes hard to -- excuse me, 24

difficult to communicate with because he is on -- has been

diagnosed on the autism spectrum, so it's kind of difficult to converse with him sometimes. But he's always been very polite to me. Allows me to come in and do the home contact. He's always obsessed about this 2255 motion that he discusses in these letters trying to get his case overturned.

One thing in particular that stands out is his obsessive-compulsive disorder, which the presentence report from the Middle District of North Carolina highlights as a prior diagnosis. He undertakes a -- what I would call a handwashing routine every morning, and it -- and his mother has verified this, for hours at a time. There have been times that I've went by the residence at 10:30, 11 o'clock in the morning, and he would come to the door covered literally head to toe in soap suds as he was engaging in his routine. Actually, the last home contact that I was -- I was there, there was standing water in the kitchen. He was engaging in his handwashing routine, and dozens and dozens, if not over a hundred slivers and cakes of soap piled up indicating that he was engaging in his handwashing routine.

That same day I went upstairs to speak with his mother, and she indicated that he was continuously doing that every morning. And you could see the effects of which in the kitchen from the water and the damage that it had caused. It seemed every time I was there that's what he was doing.

THE COURT: All right. Okay. That's all the

1 | questions I have.

Mr. Cargill, does that prompt any questions you -MR. CARGILL: Oh, just a few.

### EXAMINATION

BY MR. CARGILL:

Q So during the time that you have supervised him,

Mr. McMurray, has he seen a mental health provider for

evaluation and --

A He was going to a counselor twice per month, is a Dr. Preston Page that Mr. Hill's -- I think it's Medicaid that he has. I'm not sure if it's Medicaid/Medicare -- that he was seeing twice per month and that I had contact with to see his progress from time to time.

Q How does the -- how does the mental health provider, how does he or she feel about his mental state, or does the person share --

A I have not spoken with Mr. Page since the last time I was at his -- at Mr. Hill's residence. And after speaking with the mother, I called Mr. Page and I said this was quite concerning. And it was not very long before he was arrested for the indecent exposure. And I spoke with Mr. Page about it, and Mr. Page advised that -- that he was due to see him soon and that if he felt that there needed to be a further referral, perhaps the Piedmont Community Services, then that would be undertaken, but that appointment did not occur.

```
So your -- to your knowledge, he has not been on
1
     medication for any mental health issues.
2
          No, sir, it's -- it's been limited to his diabetes and
3
     medication.
 4
5
          Do you know whether he was evaluated mentally in
     connection with the state charge, the indecent exposure
 6
     charge?
7
          From my knowledge, they took him to the Martinsville
8
     hospital the night of the arrest and they released him. I
9
     don't know if that was more of a TDO type thing to gauge
10
     whether he was a danger to himself or others or if it was more
11
     mental health oriented. I do not have the answer to that. But
12
     he was released that night and taken into custody.
13
          But you have a general release that would allow you to get
14
     any of those records; is that correct?
15
          Yes, sir.
16
          Including any mental evaluation prepared in connection
17
     with the state charge?
18
          Yes, sir, I could -- I could receive those, yes.
19
          I checked the online court records myself, and it
20
     indicates right at the very top in red that his state case was
21
22
     appealed to circuit court effective today. Is that what you
     found, too?
23
          I printed that out as well today, sir, and I noted the
24
     same thing.
25
```

```
What does -- how does that affect his revocation in Middle
1
     District?
2
          Not having worked for that court, I'm not sure I could
3
     give you an answer, but I know that a conviction is not
4
     required, that a revocation can take place based on offense
5
     conduct alone at a preponderance of the evidence. I'm not sure
6
     how Middle District of North Carolina would wish to proceed.
7
          But in all events, since it's an active case in state
8
     court, it will at least be, what, some sort of detainer?
9
          I don't have the answer to that.
     Α
10
          I'll research that, all right.
     Q
11
          I know that a warrant hasn't been lodged as of this moment
12
     because I would receive notification. I have not received that
13
     yet. I'm not saying that it couldn't happen.
14
          And he's always just -- in my limited -- he's exceedingly
15
     polite, isn't he?
16
          Yes. He's always been polite, yes.
17
               MR. CARGILL: All right. Thank you, sir.
18
               THE COURT: All right. Any further questions,
19
     Ms. Munro?
20
               MS. MUNRO: Just one.
21
22
                                EXAMINATION
     BY MS. MUNRO:
23
          For how long was he seeing Dr. Page, do you know?
     Q
24
          He has seen Dr. Page pretty much for the duration that
     Α
25
```

```
I've supervised him.
1
          Okay. So since 2015?
     Q
2
     Α
          Give or take, yes.
3
               MS. MUNRO: Okay. All right, thank you.
4
               THE COURT: Thank you very much.
5
               Thank you, Mr. McMurray. You may step down.
6
               All right. Before we go any further into this
7
     initial appearance, I do have concerns about exactly where
8
     Mr. Hill is from a psychological and psychiatric standpoint and
9
     whether he does suffer from mental disease or defect that would
10
     affect his ability to understand and participate in his
11
     defense.
12
                It's now further complicated by one of the things
13
     that you just indicated, Mr. Cargill, and that is since he's
14
     appealed his conviction down in City of Martinsville he's
15
     entitled to a trial de novo on that issue down there. If he
16
     is -- which is what I would prefer. If he is sent to an
1.7
     evaluation at the -- with the Bureau of Prisons, that's going
18
     to complicate his situation in Martinsville.
19
               Do you know, Mr. Cargill, whether he was represented
20
     by counsel?
21
               MR. CARGILL: Mr. Hill advises that he was
22
     represented by a public defender, Scott Albrecht. And
23
     evidently -- and don't go into any details, Brian, but I think
24
     Brian filed a notice of appeal pro se. I don't believe his
25
```

1 | attorney --

2

3

4

5

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THE COURT: Don't believe his attorney did.

MR. CARGILL: He also tells me, Your Honor, that there was a competency evaluation conducted as part of his state case but that it was a local -- someone visited him in the jail.

THE COURT: Local evaluation.

MR. CARGILL: Yes.

THE COURT: All right. But my -- my initial concern is that if -- if -- if Mr. Hill is correct that there was a -if Mr. Hill believes and it's not in fact bornè out that someone made him do what he said what he's charged with doing down in City of Martinsville, that's a problem from a mental standpoint. And if he did it on his own volition and that's an excuse, that's another problem that he's going to have to deal with down in North Carolina. I think that we're much, much better off understanding exactly where he is from a mental health standpoint before he's sent back down there. I think he has to be evaluated here because I can't ask him to make a decision about having hearings up here because he's entitled to a preliminary hearing, he's entitled to all that here in this Court before he would go down to North Carolina, and I don't think -- I don't think he can make a knowing waiver or knowing decision to have those at this point.

So -- so Mr. Hill, let me ask you to stand up, if you

would, please, sir.

THE DEFENDANT: Yes, sir.

THE COURT: I've got significant concerns about whether you presently suffer from a mental -- mental health disease or defect that affects your ability to be able to participate and actively assist your counsel in addressing the issues that are raised in the -- in the petition.

I've also got -- does insanity defense apply on a supervised release violation? I've never -- never had that addressed.

MR. CARGILL: Oh, I'd say so, yes.

THE COURT: I would say so.

MR. CARGILL: Yes, sir.

about that as well. And so I'm going to -- I'm going to ask you -- or I'm going to place you in the custody of the United States Marshal, or United States Attorney General, and I'm going to have you evaluated, have a full and complete and thorough evaluation of your mental health situation so that that can be addressed. If you need to have medication, you can be placed on proper medication before you come back here to address -- address these matters. And I'm going to ask that they evaluate under both 4241 and also 4242 as well. That will also significantly assist your counsel both here and down in North Carolina if the matter goes back down to North Carolina.

```
Do you understand?
1
               THE DEFENDANT: Yes.
2
               THE COURT: All right. So I'm going to -- you're
3
     probably going to be transferred to a facility either in North
4
     Carolina or some other place nearby, we hope, for an
5
     evaluation, and then you'll be brought back here. It could be
6
     a couple or three months from now when you're brought back
7
     here, but you'll be in a much better position for me to be able
8
     to understand your situation when that occurs, all right?
9
               So I'm going to leave you with Mr. Cargill to answer
10
     any questions, which is better to be able to proceed in that
11
     regard, and I'll get that order entered today, all right?
12
               Ask your question to Mr. Cargill first before you ask
13
     it of me.
14
               THE DEFENDANT: What if I'm found not guilty in the
15
     Circuit Court of Martinsville?
16
               MR. CARGILL: That will play out. That will play
17
     out.
18
               THE COURT: All right. And -- all right.
19
               Anything else I need to address, Ms. Munro?
20
               MS. MUNRO: Nothing further.
21
               THE COURT: Mr. Cargill?
22
               MR. CARGILL: No. Thank you, Your Honor.
23
                THE COURT: All right, very well. Court will stand
24
     in recess.
25
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# USA v. Brian David Hill - 7:18-MJ-00149

1	(The proceedings concluded at 3:12 p.m.)
2	CERTIFICATE
3	I, Mary J. Butenschoen, do hereby certify that the foregoing is a correct transcript of the electronic recording
4	in the above-entitled matter,
5	/s/ 5/2/2022 Mary J. Butenschoen, Transcriber
6	nary o. Bucchschoen, Transcriber
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